UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

ALBERTSON'S, INC., Employer,

and

Case 27-RC-8373

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 368A

Petitioner.

REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND

CERTIFICATION OF RESULTS OF ELECTION

On February 25, 2005, the Petitioner, United Food and Commercial Workers Union, Local 368A, filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of the Employer, Albertson's, Inc. Following the issuance by this Office of an April 19, 2005 Decision and Direction of Election, an election by secret ballot was conducted on May 19, 2005, in the following appropriate unit:

> **Included:** All full-time and regular part-time grocery clerks, produce clerks, scan clerks, general merchandise clerks and general merchandise manager, bakery department clerks and cake decorators, service deli clerks, service operations assistant managers, service supervisors, service supervisor personnel coordinators (formerly bookkeepers), scan coordinators, customer service center clerks and courtesy clerks employed at Store No. 180 in Meridian, Idaho.
>
> **Excluded:** All meat department employees, pharmacy employees, store director, assistant store director, third person,

service operations manager, service deli manager, customer service center supervisor, produce manager, bakery manager, office clerical employees, janitors, guards, professional employees, confidential employees, supervisors as defined in the Act and all other employees.

Upon conclusion of the election, the parties were served with a Tally of Ballots.

The Tally of Ballots showed the following results:

Approximate number of eligible voters	58
Void ballots	0
Votes cast for Petitioner	13
Votes cast against participating labor organization	42
Valid votes counted	55
Challenged ballots	0
Valid votes counted plus challenged ballots	55

Thereafter, on May 26, 2005, the Petitioner timely filed four numbered Objections to the Conduct of Election, a copy of which was served on the Employer. A copy of these objections is attached. As set forth below, I find that none of these objections provide a basis for setting aside the election.

Objection No. 1: The employer stationed management officials in the store who could observe the voting area and employees entering the voting area.

In support of this objection, the Petitioner provided the signed statement of Petitioner President Martha Randklev, who asserted that Employer officials met her and the other Union officials at the store entrance prior to the pre-election conference for both polling sessions and accompanied them to and from the polling place which was "held in the left back corner of the store, behind the Butcher Block and the receiving/storage area." Ms. Randklev further asserted that she "did not see any of the Albertson's corporate employees or any Store management leave the store" and that "the Store Director's office is situated to

the right of the front doors as you enter. There is a one way glass window that has a view of the foyer of the store. (He can see who comes and goes.)" Accordingly, the Petitioner asserts that, because management officials did not leave the store and because the Store Director's office at the front of the store has one-way glass that would enable anyone in the office to see who enters and leaves the store, the Employer has engaged in objectionable conduct. I find this alleged conduct insufficient to warrant setting aside the election. In that regard, the Petitioner provided no witness testimony or other evidence to establish that Employer officials actually observed employees as they entered and left the polling area, which Ms. Randklev stated was in the "left back corner of the store." More importantly, the Petitioner has presented no evidence to show that eligible voters might have believed that Employer officials were observing the election.

In the absence of evidence that the Employer representatives engaged in specific misconduct, I find that the mere presence of such representatives in the store would not provide a basis for setting the election aside. See generally, **Peerless Plywood Co.,** 107 NLRB 427 (1954); **Andel Jewelry Corp.,** 326 NLRB 507 (1998). Accordingly, I overrule Objection No. 1.

Objection No. 2: The employer offered incentives and bribed employees to vote against the Union.

The Petitioner provided no evidence to support Objection No. 2. Therefore, I find that it does not provide a basis for setting aside the election and overrule this objection.

Objection No. 3. The employer maintained and enforced unlawful rules which interfered with the rights guaranteed by Section 7.

In support of Objection No. 3, the Petitioner provided a copy of a document entitled "Company Retail Policies", which the Employer confirmed was a policy manual in effect at Store No. 180 (and certain other stores of the Employer) at the time of the election. Page 15 of that policy manual contains the following statement: "No recording devices, pagers or cell phones may be used or brought to work without approval from the location managers." That same document at pages 17 and 18 sets forth 14 "reasons for immediate termination", one of which reads: "Using a personal beeper or cell phone while in the facility (without approval by the location manager)."

The Petitioner argues that the mere existence of this rule and accompanying threat of discipline in a policy manual routinely provided to new employees as part of a "New Associate Paperwork Kit" constitutes an improper restriction on employees' right to use pagers and cell phones to communicate with the Union and co-workers about workplace issues and a per se basis for setting aside the election. Although specifically requested to do so, the Petitioner was unable to present any evidence regarding the enforcement of these policies against unit employees during the critical period (or at any other time).

As referenced above, the Employer confirmed that the "Company Retail Policies" manual at issue is currently in effect in Store No. 180 and routinely distributed to new employees (within the critical period for this election). The Employer also presented evidence that this manual was promulgated in June 2003 and implemented at this and other stores immediately thereafter. The

Employer further proffered that the prohibition on pagers and cell phone use has not been enforced in Store No. 180. Again, the Petitioner offered no contrary evidence. Thus, it cannot be established that the Employer promulgated this prohibition on pager and cell phone use in this store in the face of the Petitioner's organizing campaign or that the Employer has ever enforced restrictions on pager and cell phone use at its premises.

Assuming without deciding that the prohibition against the use and possession of pagers and cell phones constitutes an overbroad restriction on employee use and possession of such personal equipment at the workplace, I still find that Objection No. 3 does not provide a basis for setting aside the election in this matter. In **Delta Brands, Inc.,** 344 NLRB No. 10 (February 7, 2005), the Board held that it would not set aside an election based on "the mere presence of an overbroad rule in a much larger document, with no showing that any employee was affected by the rule's existence, no showing of enforcement, and indeed no showing of any mention of the rule." In the matter now under consideration, as was the case in **Delta Brands,** the Petitioner was unable to meet its burden of proof in showing that "any employee was in fact deterred by the rule from engaging in Section 7 activity" and there was "no showing that the mere existence of the rule could have affected the results of the election." Accordingly, I find that the Employer's prohibition regarding pager and cell phone use herein does not provide a basis for setting aside the election (even assuming it might otherwise constitute a technical infringement of employee rights).

Objection No. 4. The employer has not remedied the serious and flagrant unfair labor practice (sic) found by the Administrative Law Judge in Case 27-CA-13390, et al.

On July 3, 2002, Administrative Law Judge Clifford Anderson issued his decision in Albertson's Inc., 27-CA-13390, et al, finding that the Employer had engaged in various unfair labor practice conduct. That case is currently pending before the Board based on exceptions filed by the Employer. The Petitioner in the representation matter now under consideration was involved in that unfair labor practice proceeding only to the extent that Judge Anderson found that certain overbroad Employer rules were applied to all stores of the Employer and that the Employer had failed to provide certain requested information applicable to represented stores within the jurisdiction of Local 368A, including three stores in Idaho. The employees of Store No. 180 have historically been unrepresented and employees of that store were not the direct subject of any of the unfair labor practice charges. In the investigation of the objections at hand, the Petitioner provided no evidence that any of the bargaining unit employees in Store No. 180 were involved in, or even aware of, the matters litigated and found violative by the Administrative Law Judge.

Notwithstanding that Store No. 180 was not involved in Case 27-CA13390, et al, the Petitioner asserts that the election now under consideration should be set aside because Judge Anderson found certain rules of the Employer to be unlawful and ordered a nationwide Notice posting "where the rules were bad." I disagree. I take administrative notice of the fact that in Cases 27-CA-13390 et al, the Employer by March 29, 2004, had affirmatively rescinded

the rules found violative by Judge Anderson. None of the rules found overbroad by Judge Anderson are incorporated into the "Company Retail Policies" manual at issue in this proceeding and the Petitioner has offered no evidence that the rules were maintained in Store No. 180 during the critical period. Moreover, even assuming those rules had not been rescinded by the critical period for the election conducted herein, the analysis as discussed in Objection No. 3 above concerning the lack of evidence that employees were affected by the rules' existence and the Board's **Delta Brands** analysis would apply.

The Board has long held that not all unfair labor practice conduct will warrant setting aside an election. As noted above, there is no evidence that the bargaining unit employees in Store No. 180 were even aware of the litigation in Cases 27-CA-13390 et al, and no evidence that eligible voters were affected by the issues litigated in that unfair labor practice proceeding. See, e.g., **Caron International,** 246 NLRB 1120 (1979). Accordingly, I overrule Objection No. 4.

Summary of Findings

For the reasons discussed above, I overrule Petitioner's Objections Nos. 1 through 4 in their entirety. Inasmuch as a majority of the ballots cast were not cast for the Petitioner, I certify that no labor organization is the exclusive representative of the employees in the above-described appropriate unit.

Under the provisions of Section 102.69 of the Board's Rules and Regulations, a Request for Review of this Supplemental Decision may be filed, and, if filed, must be received by the Board in Washington, DC by **July 8, 2005.**

Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Regional Director's Supplemental Decision or appended to the Request for Review or opposition thereto, which a party submits to the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent unfair labor practice charge.

Signed at Denver, Colorado, this 24th day of June 2005.

B. Allan Benson

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